

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KATHERINE POWELL,	:	NO. 1:09-CV-00710
	:	
Plaintiff,	:	
v.	:	OPINION AND ORDER
	:	
	:	
CONTINENTAL CASUALTY COMPANY,	:	
	:	
Defendant.	:	

This matter is before the Court on Motion of attorney Kevin Frank to Reconsider Order Denying Motion to Withdraw as Counsel for Powell (doc. 23), Defendant's response thereto (doc. 25), and counsel's reply in support thereof (doc. 26).

Powell's counsel had previously filed a motion to withdraw as counsel (doc. 18), and the Court held a show-cause hearing regarding the motion on March 9, 2010. Despite being ordered by the Court to appear and having been warned that failure to appear could result in dismissal of her action, Powell failed to appear at the show-cause hearing. The Court denied counsel's motion because a similar motion was pending at state court, and the Court had concerns about permitting counsel to withdraw in this matter while he was still defending Powell in her underlying state case (doc. 22). The Court noted, however, that if counsel successfully withdrew from defending Powell in that state case, the Court might reconsider its decision (Id.).

Powell's counsel submits in his motion to reconsider that

his motion to withdraw from the representation of Powell at the state level was granted on March 16, 2010 (doc. 23). He therefore asks the Court to reconsider his motion to withdraw in this matter (Id.).

Defendant has no objection to granting counsel's motion but asks the Court to incorporate certain provisions in order to prevent a situation where Powell delays her discovery responses and then seeks to delay the resolution of this case (doc. 25).

Powell's counsel replies that (i) he is entitled to withdraw pursuant to the Ohio Rule of Professional Conduct 1.16; (ii) the Court only expressed concern about the representation at the state level when it denied his motion to withdraw and that concern has been alleviated; (iii) Defendant only served the discovery it is concerned about on Powell after counsel filed his original motion to withdraw, and to impose the deadlines Defendant seeks would unfairly prejudice Powell and to impose the compliance of those deadlines as conditions on counsel's withdrawal would unfairly prejudice counsel; (iv) any request that counsel provide contact information and proof that counsel provided certain documents to Powell, as Defendant requests, is without legal justification and would be requiring counsel to perform services without compensation; and (v) any dismissal for want of prosecution should be without prejudice if Powell fails to meet Defendant's discovery timetable (doc. 26).

The Court finds Plaintiff's counsel's motion to reconsider well taken. The Court further finds that the conditions Defendant seeks to impose are not necessary to avoid prejudice and are not well taken. The Court's sole concern with respect to counsel's original motion to withdraw was the potential for conflict if this Court permitted counsel to withdraw in this matter while he was still defending Powell at the state level. That concern has been alleviated with the granting of counsel's motion in the underlying state charge. Counsel represents to the Court that Powell has not paid her legal fees and has not been communicating with counsel (doc. 18). Counsel further advises the Court that he has informed Powell of all discovery, motion and trial deadlines in this matter (Id.). Given that, the Court GRANTS the motion to reconsider and permits Plaintiff's counsel to withdraw from this matter. Consistent with the Court's order of March 10, 2010, Plaintiff is ORDERED to comply with all discovery requests by May 1, 2010, or this matter will be dismissed with prejudice. However, this is subject to further order of the Court. The Clerk is hereby DIRECTED to serve a copy of this Order on Powell at her address of record both by certified and regular mail.

SO ORDERED.

Dated: April 6, 2010

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge